IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

ANDERS TRONSEN,	*	Case No. 3:08-CV-148
Plaintiff	*	JUDGE CARR
vs.	*	DEFENDANT'S REPLY BRIEF AND MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
	*	
TOLEDO-LUCAS COUNTY PUBLIC LIBRARY	*	Julia R. Bates Lucas County Prosecuting Attorney
Defendant	*	By: John A. Borell (0016461) Karlene D. Henderson(0076083)
	*	Assistant Prosecuting Attorneys Lucas County Courthouse, Suite 250
	*	Toledo, Ohio 43624 Phone: (419) 213-2001
	*	Fax: (419) 213-2011 E-mail: JABorell@co.lucas.oh.us
	*	Counsel for Defendant

I. STATEMENT OF THE FACTS

The facts in this case are undisputed.[1] The defendant has adopted a Code of Conduct which is entitled 'Eviction Procedures & Guidelines'.[2] The defendant's written code of conduct prohibits patrons from "[e]ngaging in any act, which clearly disrupts or prevents the normal and intended use of the public library

---

[1] The only evidence before this Court is the affidavit of Jeff Sabo and documents attached thereto. Thus, there are no disputed facts.

[2] A copy of this policy was attached to the defendant's memorandum in opposition to plaintiff's motion for a

Dockets.Justia.com

by any other patrons or staff and "[v]erbal and/or physical harassment of staff of patrons to include *but not limited to*: using threatening language, stalking behavior . . . staring or watching persons in a manner which could reasonably be construed as threatening. *Eviction Procedures & Guidelines*, Nos. 12 and 18.

On December 10, 2007, the plaintiff was at the main branch of defendant Toledo-Lucas County Library. He was using one of the public computer terminals. A woman patron was using the terminal next to the plaintiff.

The plaintiff handed the woman patron a note asking that if she "weren't involved with someone, would she email him at a nudity site". The female patron was extremely frightened by the plaintiff's ***conduct*** and notified the defendant's security personnel.

Library security personnel recognized the description provided by the patron as being the plaintiff. On December 19, 2007, the plaintiff was again at the main branch of the Library. He was recognized by security personnel and questioned about the December 10th incident. The plaintiff admitted that he handed the female patron the note in question.[3]

On December 20, 2007, the plaintiff was notified in writing that his conduct violated the defendant's posted Code of Conduct and that his Library privileges were suspended for six months.[4] The written notification also advised the plaintiff of his right to appeal this decision.[5] The plaintiff did not invoke the defendant's administrative appeal process.

On January 17, 2008, the plaintiff filed a pro se complaint alleging a violation of the First

---

temporary restraining order.

[3] The plaintiff has a long history of harassing library patrons and staff. His library privileges were previously suspended for harassing library patrons. The plaintiff filed an action in the Lucas County Common Pleas Court challenging the suspension and seeking injunctive relief. The Court denied the request for a temporary restraining order and a preliminary injunction. The Court subsequently granted the motions to dismiss that had been filed by all defendants. *Mark Anders Tronsen v. Lucas County, et al.,* Lucas Co. Comm. Pl. Ct. No. CI-06-1131(Nov. 17, 2006).

[4] The temporary suspension expires on June 21, 2008.

[5] The defendant's written Code of Conduct includes a procedure to challenge a decision that the Code has been violated.

Amendment rights of free speech and expression of the United States Constitution and the free speech clause of the Ohio Constitution. The plaintiff also sought a temporary restraining order allowing him access to the public library during the pendency of this action.

The plaintiff appears to claim that his removal from the Library and subsequent temporary revocation of his library privileges violated his constitutional rights. He did NOT allege a due process or equal protection violation.[6] Rather, he appears to assert that the defendant's adoption of such a policy violates the First Amendment to the United States Constitution and the free speech clause of the Ohio Constitution. On January 22, 2008, the plaintiff's motion for a temporary restraining was denied.

The defendant filed a motion for summary judgment. The motion established that the defendant was entitled to judgment as a matter of law, since there is no evidence before the Court that the plaintiff's First Amendment rights were violated by the defendant. The plaintiff has filed numerous pleadings, including a motion for summary judgment. Plaintiff appears to argue that defendant's regulations are an impermissible content based regulation and that the regulations are vague.[7] The plaintiff is, of course, incorrect.

II. LAW AND ARGUMENT

As noted in the defendant's motion for summary judgment, Plaintiff's complaint is premised on the claim that his temporary expulsion from the defendant library violated his free speech rights under the First Amendment the First Amendment to the United States Constitution. Accordingly, this Court must initially determine the existence and extent of such rights in a public library. *See Cornelius v. NACCP & Education*

---

[6] Plaintiff has filed a motion for leave to file an amended complaint. The proposed amended complaint sought to add a due process claim. The defendant has filed a memorandum in opposition that established that the plaintiff was not entitled to file an amended complaint. Therefore, the proposed due process claim will not be discussed herein.

[7] The plaintiff actually states that the defendant regulations are 'unwritten'. He appears to be arguing that, since the defendant's regulations do not specifically prohibit passing sexually suggestive notes to other patrons, such a rule is unwritten.

Fund, Inc., 473 U.S. 788, 797(1985).

It is well-settled that Courts have refused to characterize public libraries as a traditional public forum, because library users are not allowed to engage in certain expressive conduct ordinarily associated with such forums. *Kreimer v. Bureau of Police for the Town of Morristown*, 958 F.2d 1242, 1256(3d Cir. 1992). Therefore, a library is obligated only to permit the public to exercise rights that are consistent with the nature of a library and consistent with the government's intent in designating the library as a public forum but other activities need not be tolerated. *Kreimer,* 958 F.2d at 1262; *Neinast v. Bd. of Trustees of the Columbus Metro. Library,* 346 F.3d 585, 591 (6th Cir. 2003). Traditionally, libraries provide a place for reading, writing, and quiet contemplation. *Neinast,* 346 F.3d at 591 (quoting *Kreimer,* 958 F.2d at 1261). ***Indeed, the exercise of oral and interactive First Amendment activities is antithetical to the nature of a library***. *Kreimer,* 958 F.2d at 1261; *Mainstream Loudon, et al. v. Board of Trustees of the Loudon Public Library*, 24 F. Supp.2d 552, 563(E.D. Va. 1998).

In *Kreimer,* the court held that a written rule governing conduct of a harassing or annoying nature was controlled by the reasonableness test because such restrictions are not aimed at activities which the government had specifically permitted in the library. *Kreimer*, 958 F.2d at 1263 n.24. Applying that test, the court concluded such a rule was "fundamentally reasonable" because a prohibition against disruptive behavior is perhaps the clearest and most direct way to achieve maximum use of a public library. *Kreimer,* 958 F.2d at 1263; *Leonard Brinkmeier v. City of Freeport*, Case No. 93 C 20039(N.D. Ill. July 2, 1993), 1993 U.S.Dist*. LEXIS* 9225.

Indeed, the challenged regulation in *Kreimer* was virtually identical to the defendant's regulation. That Library regulation stated that "[p]atrons shall not interfere with the use of the Library by other patrons, or interfere with Library employees' performance of their duties". *Kreimer*, 958 F.2d at 1248. The defendant's written code of conduct prohibits patrons from "[e]ngaging in any act, which clearly disrupts or prevents the normal and intended use of the public library by any other patrons or staff.

In addition, regardless of the name of the forum, the First Amendment does not prohibit regulation of conduct. Clearly, all of the defendant's regulations govern conduct not the content of speech.

In the present case, it is undisputed that the plaintiff's library privileges were temporarily suspended because of his harassment of another patron and the interference with the patron's use of the Library. Specifically, he handed a sexually suggestive note to a female patron who was a complete stranger to him. Clearly, the First Amendment does not protect such conduct. Additionally, the library clearly has a legitimate and fundamental interest in protecting library patrons from the type of disruptive, harassing, and potentially dangerous conduct engaged in by the plaintiff.

The plaintiff has filed numerous pleading that cite countless cases that are completely irrelevant to the issues presented in this case. The defendant, of course, will not waste the Court's time by analyzing each case. However, the defendant will discuss two cases that the defendant appears to believe are significant to the support of his claim to illustrate the totally irrelevancy of the cases cited by the plaintiff: *Armstrong v. District of Columbia Public Library, et al*., 154 F.Supp.2d 67(D.D.C. 2001) and *Leonard Brinkmeier v. City of Freeport*, Case No. 93 C 20039(N.D. Ill. July 2, 1993), unreported, 1993 U.S. Dist. *LEXIS* 9255.

Armstrong involved a library regulation that denied access to the District of Columbia Public Library to individual patrons with "objectionable appearance." *Armstrong*, 154 F.Supp.2d at 70. *Brinkmeier* involved the enforcement of an *unwritten* harassment policy. *Leonard Brinkmeier*, at *3. Both of these cases clearly are completely irrelevant and establish that plaintiff has no understanding of the issues present in this case.

Thus, it is clear that the plaintiff has failed to establish the defendant's temporary suspension of his library privileges did not violate the plaintiff's First Amendment rights. Therefore, the defendant is entitled to judgment as a matter of law.

III. CONCLUSION

The plaintiff's conduct during the TRO hearing and the arguments he asserts in the pleadings clearly demonstrate that he has no understanding of the consequences of his disruptive behavior and, sadly, is completely oblivious to the rights of other library patrons.[8]

Clearly, the First Amendment allows the defendant to adopt rules governing conduct of a harassing or annoying nature because such restrictions are not aimed at activities which the government had specifically permitted in the library. Courts have concluded that such rules are "fundamentally reasonable" because a prohibition against disruptive behavior is perhaps the clearest and most direct way to achieve maximum use of a public library.

Unfortunately, the plaintiff's conduct demonstrates that he has no respect for the rights of other Library patrons.

Respectfully submitted

JULIA R. BATES
LUCAS COUNTY PROSECUTING ATTORNEY

By: /s/ John A. Borell
John A. Borell
Karlene D. Henderson
Assistant Prosecuting Attorneys
Counsel for Defendant

[8] As the Court may recall, during the TRO hearing, the plaintiff argued that his harassing offense conduct was constitutionally protected in the same manner as those persons who demonstrated against segregated libraries.

CERTIFICATION

A copy of the foregoing Reply Brief was sent by Ordinary U.S. mail to the plaintiff on the 2d day of June 2008.

/s/ John A. Borell
John A. Borell
Assistant Prosecuting Attorney
Counsel for Defendant